

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PARKER-HANNIFIN CORPORATION, and  
PARKER INTANGIBLES, LLC

Plaintiff,

v.

ZIPPERTUBING (JAPAN), LTD.,

Defendant,

Civil Action No. 06-751-MPT

**DECLARATION OF WILLIAM J. MARSDEN, JR.**  
**IN SUPPORT OF ZIPPERTUBING'S OPENING BRIEF ON ITS MOTION FOR LEAVE**  
**TO FILE AN AMENDED ANSWER**

WILLIAM J. MARSDEN, JR. declares:

1. I am a member of the bar of the State of Delaware and have been admitted to practice by this court. I have personal knowledge of the facts stated herein and would testify to them under oath if called upon to do so.

2. I am an attorney in the law firm of Fish & Richardson, P.C, counsel for Defendant, Zippertubing (Japan) Ltd. ("Zippertubing") in this matter.

3. I make this declaration to identify documents submitted in conjunction with Zippertubing's Opening Brief in Support of its Motion for Leave to File an Amended Answer.

4. Exhibit A is a true and correct copy of an April 14, 2008 e-mail correspondence between parties' counsel.

5. Exhibit B is a true and correct copy of an August 7, 2008 e-mail correspondence between parties' counsel.

6. Exhibit C are true and correct copies of August 7 and 12, 2008 e-mail correspondence between parties' counsel.

7. Exhibit D is a true and correct copy of an August 12, 2008 e-mail correspondence between parties' counsel.

8. I declare under the penalty of perjury that the foregoing is true and correct.

Dated: August 18, 2008

FISH & RICHARDSON P.C.

By: /s/ William J. Marsden, Jr.

William J. Marsden, Jr. (#2247)  
919 N. Market Street, Suite 1100  
P.O. Box 1114  
Wilmington, DE 19899-1114  
(302) 652-5070  
marsden@fr.com

John B. Pegram  
John D. Garretson  
David Loretto  
153 E. 53rd Street, 52nd Floor  
New York, NY 10022  
(212) 765-5070  
Attorneys for Defendant  
ZIPPERTUBING (JAPAN), LTD.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2008, I electronically filed with the Clerk of Court  
**DECLARATION OF WILLIAM J. MARSDEN, JR. IN SUPPORT OF**  
**ZIPPERTUBING'S OPENING BRIEF ON ITS MOTION FOR LEAVE TO FILE AN**  
**AMENDED ANSWER** using CM/ECF which will send electronic notification of such filing(s)  
to the following Delaware counsel. In addition, the filing will also be sent via hand delivery:

Rudolf E. Hutz, Esq.  
Francis Digiovanni  
Steven A. Nash  
Connolly, Bove, Lodge & Hutz LLP  
The Nemours Building  
1007 North Orange Street  
P.O. Box 2207  
Wilmington, DE 19801

Attorneys for Plaintiff  
PARKER-HANNIFIN CORPORATION

/s/ William J. Marsden, Jr.  
William J. Marsden, Jr. (#2247)

**EXHIBIT A**

## Lawrence Lu

---

**From:** John Pegram  
**Sent:** Monday, April 14, 2008 4:23 PM  
**To:** Zippertubing/PH v  
**Subject:** FW: PH v. ZTJ - Schedule

F.Y.I. JBP

---

**From:** John Pegram  
**Sent:** Monday, April 14, 2008 2:43 PM  
**To:** 'Steve Nash'  
**Cc:** William Marsden; David Loretto; Frank DiGiovanni; Lennon, Jim; sdaniels@whdapatentlaw.com  
**Subject:** RE: PH v. ZTJ - Schedule

Steve:

I'll get back to you after consulting our client and team. Also, I'll consult Jim Lennon and Scott Daniels, as we were directed to proceed in these cases on a consolidated basis.

Regards, John

**John B. Pegram**  
 **Fish & Richardson P.C.**  
Citigroup Center - 52nd Floor  
153 East 53rd Street  
New York, NY 10022-4611  
[pegram@fr.com](mailto:pegram@fr.com) <<mailto:pegram@fr.com>>  
Tel.: 212-765-5070  
Fax: 212-258-2291

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**From:** Steve Nash [<mailto:SNash@cblh.com>]  
**Sent:** Monday, April 14, 2008 11:16 AM  
**To:** John Pegram  
**Cc:** William Marsden; David Loretto; Frank DiGiovanni  
**Subject:** PH v. ZTJ - Schedule

John,

Due to some technical issues, our e-discovery production was not completed last Friday as planned. We have resolved those issues, and will make the production this week.

Also, you had previously indicated over the telephone that Zippertubing does not wish to produce witnesses for deposition in Delaware. Rather, we will need to go to Japan for depositions. We have checked with the consulate in Kobe. Unfortunately the earliest deposition dates are in October. To accommodate the depositions, we propose modifying the schedule by extending the fact discovery cut-off from June 20 to November 14 (making it concurrent with expert discovery). All other dates would be as we discussed with Judge Thyne on March 13:

8/18/2008

May 1, 2008 - Parties exchange list of terms to be construed (Scheduling Order para. 11);  
June 2, 2008 - Joint claims construction chart due (para. 11);  
July 1, 2008 - Opening Markman briefs due (para. 12);  
July 15, 2008 - Responsive Markman briefs due (para. 12);  
July 31, 2008 or any date thereafter that is convenient for the Court - Markman Hearing (para. 13);  
August 15, 2008 - Initial expert reports due (para. 3.d.);  
September 15, 2008 - Rebuttal expert reports (para. 3.d.);  
November 14, 2008 - Close of expert discovery (para. 3.d.) AND last day of fact discovery (para. 3.c.);  
December 15, 2008 - Dispositive Motions (para. 10);  
January 16, 2009 - Oppositions to Dispositive Motions (para. 10);  
January 30, 2009 - Replies re Dispositive Motions (para. 10).

Please let me know if the new proposed schedule is acceptable to you. The new proposed schedule would be effective for the ZTJ and Seiren cases only, as we decided to keep those cases coordinated during the March 13 conference call. Schlegel's counsel requested its own trial, and no further extensions on discovery. So we will leave undisturbed the schedule proposed March 13 for the Schlegel case.

I would like to submit the proposed schedule for the Court's approval ASAP. In the meantime, I suggest we rely on the mutually agreed date of May 1 for the exchange of claim terms to be construed, rather than April 15 as set forth in the current schedule. Please let me know ASAP if ZTJ is agreeable.

Regards,  
Steve

Steven A. Nash  
Connolly Bove Lodge & Hutz LLP  
The Nemours Building  
1007 N. Orange Street  
PO Box 2207  
Wilmington, DE 19899

Tel: 302.888.6306  
Fax: 302.658.5614  
email: snash@cblh.com

Admitted in Pennsylvania

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8/18/2008

**EXHIBIT B**

**Lawrence Lu**

---

**From:** John Garretson  
**Sent:** Thursday, August 07, 2008 6:43 PM  
**To:** 'kwalter@chlh.com'; 'Steve Nash'  
**Cc:** William Marsden; 'Frank DiGiovanni'; David Loretto; John Pegram; 'Daniels, Scott'; Lawrence Lu  
**Subject:** RE: [PH v. Zippertubing] RE: Discovery

Keith,

I left you a voice mail message a short while ago. We need to resolve the following issues:

(1) Stipulation regarding expert reports.

Please send us a draft stipulation reflecting the parties' agreement (at Parker's request) to extend the due dates for initial and rebuttal reports by 30 days.

(2) Protective order.

We sent this to you two weeks ago and have followed up three times. Each time, you said that Parker would sign the order if it is identical to the one in the Seiren and Schlegel cases (which it is). Parker has had ample opportunity to confirm this.

Please sign and return the protective order tomorrow, or we will raise the issue with the Court on Monday.

(3) Inequitable conduct.

On July 31 (one week ago), Scott Daniels and I spoke with you, Frank DiGiovanni and Steve Nash. During that conversation, Scott and I said that we would seek leave to amend our respective answers to add the same inequitable conduct defense contained in Schlegel's amended answer. We asked you to check with your client and let us know whether Parker opposes our request. Please provide Parker's answer by the close of business tomorrow (August 8).

Please call me at 212-641-2219 if you have any questions.

Thanks,

John

-----Original Message-----

**From:** John Garretson  
**Sent:** Monday, July 28, 2008 7:57 PM  
**To:** 'kwalter@chlh.com'  
**Cc:** William Marsden; Frank DiGiovanni; David Loretto; John Pegram  
**Subject:** FW: [PH v. Zippertubing] RE: Discovery

Keith,

When we spoke on Thursday, you indicated that Parker would sign the attached protective order. As I confirmed during our conversation (and in my July 23 e-mail), this order is identical to the one entered in the Seiren and Schlegel cases. Accordingly, please execute and return it to me tomorrow by pdf so that we can file it with the court.

Thanks,

John



**EXHIBIT C**

**Lawrence Lu**

---

**From:** John Garretson  
**Sent:** Thursday, August 07, 2008 6:43 PM  
**To:** 'kwalter@chlh.com'; 'Steve Nash'  
**Cc:** William Marsden; 'Frank DiGiovanni'; David Loretto; John Pegram; 'Daniels, Scott'; Lawrence Lu  
**Subject:** RE: [PH v. Zippertubing] RE: Discovery

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Thanks,

John

## Lawrence Lu

---

**From:** John Garretson  
**Sent:** Tuesday, August 12, 2008 9:33 AM  
**To:** 'FDiGiovanni@cblh.com'; William Marsden; 'JHEANEY@MNAT.COM'; 'SDaniels@WHDA.COM'  
**Cc:** David Loretto; John Pegram; Lawrence Lu; 'SNash@cblh.com'; 'KWalterJr@cblh.com'  
**Subject:** Re: Parker v Seiren; Parker v Zippertubing

Frank,

Please provide Parker's answer today as to whether it will oppose Zippertubing's and Seiren's motions to amend their respective answers to include the inequitable conduct defense contained in Schlegel's amended answer.

Thanks,

John

---

**From:** Frank DiGiovanni  
**To:** William Marsden; John Garretson; JHEANEY@MNAT.COM ; Daniels, Scott  
**Cc:** David Loretto; John Pegram; Lawrence Lu; Steve Nash ; Keith A. Walter Jr.  
**Sent:** Mon Aug 11 18:48:06 2008  
**Subject:** RE: Parker v Seiren; Parker v Zippertubing

The protective order sent to Parker's counsel on July 23 by John Garretson is acceptable to Parker. You may e-sign on my behalf. Frank

Sent by GoodLink ([www.good.com](http://www.good.com))

-----Original Message-----

**From:** William Marsden [<mailto:marsden@fr.com>]  
**Sent:** Monday, August 11, 2008 12:49 PM Eastern Standard Time  
**To:** Frank DiGiovanni; John Garretson; JHEANEY@MNAT.COM; Daniels, Scott  
**Cc:** David Loretto; John Pegram; Lawrence Lu; Steve Nash; Keith A. Walter Jr.  
**Subject:** RE: Parker v Seiren; Parker v Zippertubing

Frank - This is fine with ZPT, but the last sentence should read "depositions" plural. Wm.

William J. Marsden, Jr.  
Managing Principal  
Fish & Richardson P.C.  
919 North Market Street  
Suite 1100, P.O. Box 1114  
Wilmington, DE 19899-1114

E-mail: [marsden@fr.com](mailto:marsden@fr.com)  
Telephone: 302 652-5070

-----Original Message-----

**From:** Frank DiGiovanni [<mailto:FDiGiovanni@cblh.com>]  
**Sent:** Friday, August 08, 2008 12:20 PM  
**To:** John Garretson; William Marsden; JHEANEY@MNAT.COM; Daniels, Scott

8/18/2008

Cc: David Loretto; John Pegram; Lawrence Lu; Steve Nash; Keith A. Walter Jr.  
Subject: Parker v Seiren; Parker v Zippertubing

John, William, Julie, and Scott:

Attached are proposed stipulations that would extend the expert disclosure and discovery periods by approximately 30 days. Should the stipulation in your case be acceptable to you, I ask that William and Julie please let me know whether I may e-sign for your respective clients and then e-file.

Regards,

/Frank

Francis DiGiovanni  
Connolly Bove Lodge & Hutz LLP  
The Nemours Building  
1007 North Orange Street  
Wilmington, Delaware 19801  
Phone: (302) 888-6316  
Fax: (302) 658-5614

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8/18/2008

**EXHIBIT D**

## Lawrence Lu

---

**From:** Steve Nash [SNash@cblh.com]  
**Sent:** Tuesday, August 12, 2008 10:38 AM  
**To:** John Garretson; Frank DiGiovanni; William Marsden; JHEANEY@MNAT.COM; SDaniels@WHDA.COM  
**Cc:** David Loretto; John Pegram; Lawrence Lu; Keith A. Walter Jr.  
**Subject:** RE: Parker v Seiren; Parker v Zippertubing

John,

Parker will oppose the motions.

Regards,  
Steve

Steven A. Nash  
Connolly Bove Lodge & Hutz LLP  
The Nemours Building  
1007 N. Orange Street  
PO Box 2207  
Wilmington, DE 19899

Tel: 302.888.6306  
Fax: 302.658.5614  
email: snash@cblh.com

Admitted to practice in PA only and before the USPTO

---

**From:** John Garretson [mailto:Garretson@fr.com]  
**Sent:** Tuesday, August 12, 2008 9:33 AM  
**To:** Frank DiGiovanni; William Marsden; JHEANEY@MNAT.COM; SDaniels@WHDA.COM  
**Cc:** David Loretto; John Pegram; Lawrence Lu; Steve Nash; Keith A. Walter Jr.  
**Subject:** Re: Parker v Seiren; Parker v Zippertubing

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Thanks,

John

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**From:** Frank DiGiovanni  
**To:** William Marsden; John Garretson; JHEANEY@MNAT.COM ; Daniels, Scott  
**Cc:** David Loretto; John Pegram; Lawrence Lu; Steve Nash ; Keith A. Walter Jr.  
**Sent:** Mon Aug 11 18:48:06 2008  
**Subject:** RE: Parker v Seiren; Parker v Zippertubing

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"depositions" plural. Wm.

William J. Marsden, Jr.  
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Wilmington, DE 19899-1114

E-mail: [marsden@fr.com](mailto:marsden@fr.com)  
Telephone: 302 652-5070

-----Original Message-----

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Regards,

/Frank

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Connolly Bove Lodge & Hutz LLP  
The Nemours Building  
1007 North Orange Street  
Wilmington, Delaware 19801  
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